BEFORE THE
PUBLIS SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2020-106-A

IN RE: Actions in Response to COVID-19	))))	**VOTE SOLAR'S COMMENTS ON REGULATORY OPTIONS TO MITIGATE COVID-19 IMPACTS ON ELECTRIC RATEPAYERS**

Pursuant to the South Carolina Public Service Commission ("Commission") Directive Order No. 2020-372, Vote Solar[1] appreciates the opportunity to submit these comments in response to the Office of Regulatory Staff's ("ORS") *Motion to Solicit Comments from Utilities and Other Interested Stakeholders Regarding Measures to be Taken to Mitigate Impacts of Covid-19 on Utility Customers and Require Recordkeeping* ("Motion"). Vote Solar commends the leadership of ORS in asking all parties to bring forward ideas to meet this historic challenge. Vote Solar's comments focus on residential electric customers in arrears and are grounded in five general recommendations:

- First, reinstate the disconnection moratorium through **August 2020**;
- Second, create a repayment grace-period through **March 2021**;
- Third, explore interim pathways for **arrearage forgiveness,** including creative solutions that provide debt relief as an incentive for EE/DSM participation;
- Fourth, frame a **balanced response toward utility cost recovery** that offsets incremental Covid costs with identifiable and traceable savings; and
- Lastly, initiate a proceeding addressing structural issues of affordability and explore innovative customer programs as part of long-term solutions.

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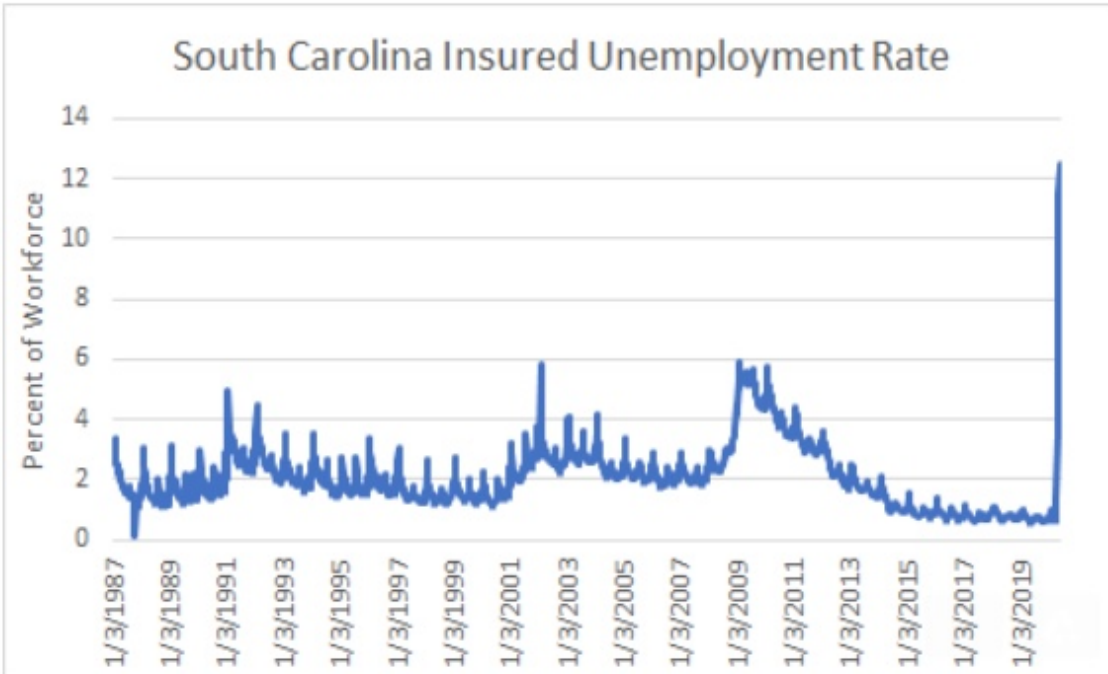
[1] Vote Solar is a non-profit, grassroots organization that works to foster economic opportunity, promote energy independence for consumers, and address environmental concerns by making solar generation accessible and cost-effective for all Americans.

Given the pervasive impact of the economic challenge on all sectors and persons, solutions must be balanced, appropriately weighing the interests of utilities, consumers, and the state economy. While the economic crisis from Covid-19 affects all parties, it has a disproportionate impact on limited-income individuals, who live paycheck to paycheck and are vulnerable to even temporary income disruption. Solutions must be both equitable and compassionate so that the most vulnerable citizens are not facing status quo disconnection practices, when little else in their lives has truly returned to normal.

Vote Solar recognizes that these solutions also must be capable of rapid deployment and respect the limits of existing utilities law. **Section I** discusses the need to extend the moratorium and to create a pathway for forgiveness of arrearages where appropriate. **Section II** addresses some of the legal authority and limitations the Commission has in facing this crisis. **Section III** describes some tools available to the Commission to effectively mitigate impacts on utilities and customers. **Section IV** proposes a novel solution to tie arrearage forgiveness as an incentive to engage in energy efficiency or demand-side management programs. **Section V** proposes a longer-term investigation to develop new standards and protocols to provide customers facing arrearages and disconnection additional pathways to improve affordability.

I. Immediate Action Is Needed to Prevent Service Disconnections.

Working families in South Carolina need support in this unprecedented time. Since March, 462,000 South Carolina workers have applied for unemployment insurance,[2] and these numbers might not count self-employed workers[3] or those who tried to apply, but could not.



As a result, only 29% of unemployed Americans received benefits in March, [4] and in April 53% of low-income households reported that they would be unable to pay their bills.[5] Families struggle with economic displacement while sheltering in place. Utility bills, which average $321 per month in South Carolina, will continue to come due, and in just four months a household could rack up $1,283 in debt.[6]

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[2] Bureau of Labor Statistics. Unemployment Insurance Weekly Claims Data. https://oui.doleta.gov/unemploy/wkclaims/report.asp.

[3] Andrew Garin and Dmitri Koustas. Relief for Self-Employed Workers: Why the Hold Up and How to Fix it. Becker Friedman Institute. https://bfi.uchicago.edu/wp-content/uploads/BFI_White-Paper_Koustas_4.2020.pdf.

[4] Pew Research Center. "Not all unemployed people get unemployment benefits; in some states, very few do." https://www.pewresearch.org/fact-tank/2020/04/24/not-all-unemployed-people-get-unemployment-benefits-in-some-states-very-few-do/.

[5] Pew Research Center. "About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19." https://www.pewsocialtrends.org/2020/04/21/about-half-of-lower-income-americans-report-household-job-or-wage-loss-due-to-covid-19/.

[6] Vote Solar. *COVID-19 and the Utility Bill Debt Crisis*. Votesolar.org/debt.

Unfortunately, recovery from the economic crisis is not likely to happen quickly. Experts at Goldman Sachs, JP Morgan, and Bank of America estimate unemployment in the second quarter of 2020 to be between 15 and 20%, and it is difficult to predict how long the downturn will last.[7] For each month that South Carolina is in recovery, economically disrupted households across the state could theoretically face as much as $117 million in debt to their utility companies. Between March and June, household debt to utilities could theoretically reach as much as $468 million—almost half a billion dollars.[8] Accurate and frequent reporting on the state of arrearages is critical to give the Commission and stakeholders a line of sight on the actual breadth and depth of the ratepayer debt crisis.

Even with the lifting of stay-at-home orders in South Carolina, the state economy will likely be tied to consumer confidence and all indicators are that there are significant challenges to an immediate rebound. Indeed, as discussed by Chair of the Federal Reserve on the news program *60 Minutes* this past weekend, it is likely that the economic damage from Covid-19 will linger deep into 2021 and that consumer confidence could falter until such time as there is a vaccine available or some credible treatment available and affordable on the mass market.[9] While South Carolina has begun the process of returning to work, it cannot return to "normal" overnight. The circumstances that justified

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[7] US Senate Joint Economic Committee. Automatic Support for Americans during the Coronavirus Crisis. https://www.jec.senate.gov/public/_cache/files/6d1567b9-c5df-45e8-8b6f-26596cc253c3/automatic-support-during-the-coronavirus-crisis-final.pdf.
[8] *Utility Bill Debt Crisis* (Vote Solar).
[9] *See* Full Transcript: *Fed Chair Jerome Powell's 60 Minutes Interview on Economic Recovery from the Coronavirus Pandemic* (May 17, 2010), *available at* https://www.cbsnews.com/news/full-transcript-fed-chair-jerome-powell-60-minutes-interview-economic-recovery-from-coronavirus-pandemic/.

the Commission's initial moratorium will persist into the foreseeable future and many households will continue to struggle to pay monthly bills. All of this suggests that an unprecedented and unacceptable number of disconnections could be imminent in the coming weeks and months. This is especially concerning as we enter what is expected to be a historically hot summer season.[10]

Vote Solar urges the Commission to use its authority to renew the moratorium on disconnections. In addition to a renewed moratorium, we urge the Commission to adopt a standard grace period for repayment and to allow time for policies that could lead to arrearage forgiveness for some consumers. Stakeholders, utilities, and the Commission need time to develop a balanced plan to minimize the damage of this pandemic to the economy and to the families most at risk. Taking these measures now would buy a little time and prevent widespread social disruption while these interim and long-term solutions are pursued.

II. The Commission Has Broad Legal Authority to Institute Extraordinary Measures to Address the Covid-19 Ratepayer Debt Crisis.

The Commission has broad authority to regulate in the public interest and to protect the state economy and its citizens from the unprecedented challenges of the moment. The Commission is broadly vested under § 58-3-140 "with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State." While this language is silent on the Commission's broader

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[10] Thomas Frank, E&E News, *"2020 on Track to Rank in the Top 5 Hottest Years on Record," available at* https://www.scientificamerican.com/article/2020-on-track-to-rank-in-the-top-5-hottest-years-on-record/.

duty to the state or society, the Commission has routinely applied its authority to harmonize with the pro-growth policies[11] of this state and has considered the broader societal impacts[12] that energy regulatory decisions have on vulnerable communities. Protecting the state and its citizens from economic calamity and social disruption that would accompany mass disconnections is within the Commission's essential charge under the laws of this state. Indeed, the first moratorium was issued under the Commission's inherent authority to regulate and supervise the rates and practices of electrical utilities, breathing the binding force of law into the Governor's pronouncement.

The Commission's inherent authority over practices and rates of utilities similarly provides the Commission the power it needs to provide consistency and fairness in how utilities address flexible repayment periods following the moratorium. The Commission has authority to, in some circumstances, direct the relief of past due balances for consumers, so long as appropriate cost recovery is provided and the means of recovering forgiven arrearages is just and reasonable. In the case of economic development riders, the public interest benefits are often touted as promoting economic growth (creation of jobs in the service territory) and in the retention of load. Similarly, retaining customers on the grid through arrearage management and partial debt forgiveness, rather than

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[11] *See, e.g.,* Order No. 2011-510 (July 29, 2011), *In re: Petition of South Carolina Electric & Gas Co. for an Accounting Order to Defer and Record as a Regulatory Asset a Community/Economic Development Grant Made to Central SC Alliance,* Docket No. 2011-264-E; Order 2004-600 (Dec. 8, 2004) (approving revisions to Progress Energy Carolinas Economic Development Rider); Order 2015-587 (August 12, 2015) (noting "This Commission has long supported economic development on the part of our utilities as being in accord with State economic development policy….")

[12] Directive Order published May 1 (discussing disproportionate impact of high fixed charge proposal on low-income customers), 2019 in Docket No. 2018-319-E, *available at* https://dms.psc.sc.gov/Attachments/Matter/86a4fa07-3796-4ff7-8486-07de716a0809.

disconnecting them for some indeterminate period, helps shore up utility revenues and spreads costs across the additional kilowatt-hour ("kWh") sales. As the National Consumer Law Center observes, "the best available evidence is that [arrearage management plans] have a positive impact on utility revenues—customers in the plan make higher payments than if they were not in the plan and continue to make higher payments even after completing the plan."[13] Coupled with this revenue, avoided disconnections and avoided collections costs are a benefit to all ratepayers. Many jurisdictions have adopted arrearage management plans with a partial debt forgiveness element, as an incentive to keep customers on the grid.

The National Consumer Law Center has, in response to the Covid-19 crisis, published a policy template for adopting arrearage management and percentage of income payment plans.[14] A recent resolution of the National Association of State Utility Consumer Advocates ("NASUCA") observes that arrearage management and other flexible repayment plans will need to be expanded where instituted and adopted by Commissions where there is no existing template.[15] The current circumstances provide compelling reasons to take on the call of NASUCA and NCLC to consider the merits of adopting some of the programs that are enabling states like Ohio, Massachusetts,

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[13] Harak, Charlie, "Helping Low-Income Utility Customers Manage Overdue Bills through Arrearage Management Programs (AMP)," National Consumer Law Center (Sept. 2013), *available at* https://liheapch.acf.hhs.gov/pubs/amp_report_final_sept13.pdf.
[14] Howat, John, "Electric Service Discount and Arrearage Management Program Design Template," National Consumer Law Center (April 2020), attached as "Attachment A."
[15] NASUCA Resolution 2020-01 (May 12, 2020): *NASUCA Recommendations Concerning the Effects of the Public Health and Economic Crises Resulting from COVID-19 upon Utility Rates and Services Provided to Consumers by Public Utilities*, attached as "Attachment B," *available at* https://www.nasuca.org/2020-01-nasuca-covid-19-policy-resolution/.

Connecticut, New York, and Colorado to rely on these existing tools as their front-line defense against the disruptive impacts of Covid-19 on both customers and utilities.

Vote Solar acknowledges that the Commission's power to compel forgiveness of utility debt is not unbounded and that bold policy changes must be carefully considered. In particular, Vote Solar notes that any debt relief for ratepayers in arrears must be conducted in a manner that avoids issues of unconstitutional takings, retroactive ratemaking, and discriminatory or preferential treatment of some ratepayers. Vote Solar suggests that a round of legal briefing could be a productive threshold exercise to help give the Commission and parties confidence that any debt relief solutions are built upon solid legal foundations. Any solution for ratepayer debt relief should appropriately compensate utilities (balanced against any offsetting Covid-related utility cost savings) and provide sufficient public interest justification for the relief.

III. "Synchronizing the Regulatory Response" to Balance the Costs and Offsetting Cost Reductions Associated with Covid-19 Will Mitigate Financial Impacts to Ratepayers and Utilities.

Vote Solar fundamentally supports the premise behind ORS's motion that it is appropriate to track and balance potentially offsetting factors in accounting for and measuring Covid-related impacts on utility revenues. In our review of available literature and past practices in other jurisdictions, ORS's recommendation is consistent with best practices and should be seriously considered by the Commission as one of the most effective means of mitigating the impacts of this crisis on utilities and ratepayers. While Vote Solar understands that it would be inappropriate to adjust a utilities approved return on equity or rates for service outside of a general rate case proceeding, using a deferral/regulatory asset to account for Covid-related cost increases and cost offsets gives the Commission flexibility for future treatment of these costs and puts utilities on notice that any prospective net offsets might be subject to refund at a future time through the appropriate proceeding.

ORS's motion and recommendations track very well with recent recommendations of national regulatory expert and thought leader Jim Lazar, who published a blog through the Regulatory Assistance Project titled "Synchronizing the Regulatory Response to Covid-19,"[16] attached for the convenience of the Commission as "Attachment C." Lazar's article emphasizes that COVID-19 is likely to impose a broad array of costs **and** savings on utility operations, and that to some extent these impacts may offset each other. A precise and appropriate response should appropriately consider all relevant impacts to utility revenues, costs, and operations before applying any regulatory relief. It is important to take a holistic view of the Covid-related costs and offsets as the entire universe of circumstances (societal, economic, class and individual usage profiles) have changed since current rates were approved and deemed to be just and reasonable. ORS appropriately identifies the cost impacts of decreased commercial & industrial activity, temporary customer protections and changes in operations. But Lazar also identifies impacts as diverse as improved load factors or decreases in interest rates as factors relevant to determining incremental cost impacts. The point of "synchronizing" the response is to ensure that all facets of utility operations are considered to provide an optimal outcome for ratepayers and utilities. Looking at categories of costs in isolation (without considering all potential offsets) will lead to an inevitable upward pressure on rates and unmitigated ratepayer impacts.

[16] https://www.raponline.org/blog/synchronizing-the-electric-regulatory-response-to-covid-19/

Utilities across the country are experiencing these impacts and many are already proactively seeking relief from their regulatory authorities. In Indiana, for example, a group of ten utility companies filed a petition to address coronavirus-related costs, which controversially includes lost revenues from declining sales as an incremental cost of Covid-19.[17] Regulators in multiple other states are also faced with how to "synchronize" the response to Covid-19 as utilities seek deferral to a regulatory asset as a means to protect against COVID-related revenue impacts.[18]

While the current conditions are unprecedented, regulatory actions taken in the midst of the 2008-2009 recession might provide some insight for balancing these considerations. The New York Public Service Commission ("NY PSC") instituted a proceeding to account for costs of utilities' voluntary actions to provide relief to customers and address rising levels of uncollectible expenses.[19] The NY PSC proposed five criteria for approval of deferral of these expenses: (1) utilities must already be taking all required and voluntary actions to minimize service terminations and continuing to

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[17] Joint Petition For (1) Authority For All Joint Petitioners To Defer As A Regulatory Asset Certain Incremental Expense Increases And Revenue Reductions Of The Utility Attributable To Covid-19; And (2) The Establishment Of Subdockets For Each Joint Petitioner In Which Each Joint Petitioner May Address Repayment Programs For Past Due Customer Accounts, Approval Of New Bad Debt Trackers, And/Or Details Concerning The Future Recovery Of The Covid-19 Regulatory Asset. Indiana Utility Regulatory Commission. Case No. 45377. https://www.citact.org/sites/default/files/45377-Joint-Petition-for-COVID19-Relief-05082020.pdf.

[18] *See, e.g.,* The National Association of Regulatory Utility Commissioners maintains a library of responses to COVID-19, *available here*: https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/; E9 Insight Covid-19 Commission Coverage *available at: https://e9insight.com/covid-coverage/*.

[19] State of New York Public Service Commission. Order Instituting Proceeding and Seeking Comments, Case 08-M-1312. http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=08-M-1312&submit=Search.

minimize uncollectible expense; (2) current rates must be demonstrably unable to recover sufficient revenue to address working capital and uncollectible expenses; (3) proposed additional mechanisms must be warranted and appropriate given the terms of current rates; (4) deferrals must not result in an overearning position for the utility; and (5) the amount to be deferred must be 5% or more of net income.[20] We believe these criteria are an appropriate starting point for considering the relative costs and benefits of deferral in the current environment. The entire NY PSC order is attached as "Attachment D" for the convenience and consideration of the Commission.

IV. Utilities Should Leverage Demand-Side Management and Energy Efficiency Programs to Provide Immediate Debt Relief and Long-Term Bill Reductions to Participating Customers.

Larger than usual bad debt and uncollectible customer accounts pose a potentially material cash flow and credit risk to electrical utilities. Without a reconciliation mechanism to help utilities track and recover any incremental increases to bad debt write-offs, those write-offs could become the responsibility of shareholders. Certainly, when a utility has incurred increased bad debt expense because normal disconnection practices have been waived—such as the disconnection moratorium—there is a valid argument that utilities should be made whole for that unforeseen increase in bad debt expense. Under the current circumstances, Vote Solar supports the ability of utilities to recover any incremental costs associated with incurring arrearages beyond what they would have but for the moratorium, subject to any offsetting savings occurring under these same circumstances.

[20] *Order Specifying Criteria for Deferral of Costs*, NY PSC Case 08-M-1312 (May 15, 2009), attached as "Attachment D."

But more important than the issue of cost recovery of bad debt resulting from disconnection is preventing arrearages from ever converting to bad debt. Rather than waiting for customers to be disconnected for being in arrears, and for the arrears upon disconnection to ultimately turn into bad debt write-offs and negative credit reporting for consumers, Utilities should fully embrace and explore options to forestall this unwanted conclusion.

One solution is to match customers who need relief with utility direct assistance programs. Of course, these programs tend to be based on income eligibility thresholds for receipt of benefits and there are many South Carolinians facing hardship to pay mounting bills that may not qualify for low-income thresholds based on previously earning above those numbers. These programs also have serious limitations in budget and administration, suggesting that they will not be right-sized to match the coming arrearage debt levels without significant infusion of state or federal funds. The HEROES Act, which just passed the U.S. House of Representatives has generous provisions to cover payment of arrears for utility service, but Senate Majority Leader Mitch McConnell has declared the bill dead on arrival in the Senate. The direct assistance cavalry does not appear to be coming.

A novel and creative solution could be matching consumers who need debt relief with utility incentive programs for participating in energy efficiency or demand-side management programs. Just for purposes of illustration, say that a customer is $700 in arrears to their electric utility. Through a Clean Relief for Energy Debt ("CRED") program, a customer would have the option to forgive the entire $700 arrearage as an upfront incentive to participate in an approved energy efficiency or demand-side program (e.g., a smart thermostat program coupled with a time-of-use rate schedule). Through this program, a utility could forgive the $700 in arrears and convert some portion or all into an incentive for participating in the applicable DSM program. This solution would give customers the option of an up-front forgiveness of past due amounts in consideration of their prospective participation in these programs.

Such solutions are fundamentally aligned with the spirit and intent of the recently enacted Energy Freedom Act (Act 62). The General Assembly found that there "is a critical need to… (1) protect customers from rising utility costs; and (2) provide opportunities for customer measures to reduce or manage electric consumption from electrical utilities…." § 58-27-845. The legislature envisioned using customer programs that enable consumers to take personal responsibility for their own bills by embracing technologies and methods that help reduce consumption from the grid and lower overall energy usage (while also helping system performance with peak reduction and other services). This novel approach to arrearages could fulfill the intent of the Energy Freedom Act to create a win-win-win for consumers, utilities, and the state economy that benefits from the activity associated with customer energy savings programs.

During the current pandemic, an EE/DSM pathway to arrearage forgiveness could be a "fair shake" for all customers facing economic hardship, without regard to the typical income-eligibility requirements associated with direct assistance programs. Customers that are willing to take on an EE/DSM program commitment (including behavioral changes to consumption) will earn their debt forgiveness upfront through an approved EE/DSM program, without creating a need to socialize bad debt and incurring the expense of disconnection. This pathway aligns the interests of the indebted consumer, the utility, and other consumers, as it is in everyone's interest to prevent the disconnection and have more customers engage in behaviors that positively influence the performance or cost of the electric grid.

For low-income customers that are not willing to participate in an EE/DSM program but are able to participate in a type of arrearage management plan, the forgiveness of Covid-era debt could be similarly viewed as an incentive to stay connected to the grid and contributing to rate base. After successful completion of an arrearage management plan (i.e., making consecutive payments capped based on ability to pay), customer arrearages would be put in a regulatory asset and recovered by the utility from other ratepayers at the appropriate time. Vote Solar recommends that the Commission adopt an arrearage management plan as a long-term policy, as discussed in NCLC's program design template, but notes that some form of an interim debt forgiveness incentive could be adopted in the interim to address Covid-related customer arrearages. While it may be impossible to prevent all disconnections, policies such as these are in the public interest of reducing the amount of bad debt write-offs and providing a path of hope for South Carolinians during this most challenging time.

V. Further Commission Action to Address Long-Term Considerations of Affordability and Arrearage Management Is Justified.

The immediate crisis of customer affordability is rightfully the topic of this proceeding and the comments in response to ORS's motion. However, Vote Solar notes that the current crisis has really exposed the fragile economic circumstances of average citizens and creates a moment of opportunity to adopt structural improvements to protect customers from future crises and from the risk of disconnection even in normal times. Vote Solar recommends that the Commission open a longer-term proceeding to explore the recommendations of the National Consumer Law Center's policy template and more thorough consideration of how customer programs aimed at encouraging customer conservation, efficiency, or use of clean energy resources could be leveraged as tools to improve affordability for ratepayers with a high energy burden.

Vote Solar sees great promise in pairing affordability and rate relief for low-income communities and customers with programs that provide permanent or structural improvements in place that help lower bills going forward. Direct financial assistance is compassionate and desperately needed at this time, but longer-term solutions should explore options that create lasting improvements to affordability.

WHEREFORE, Vote Solar requests that the Commission take immediate action to protect ratepayers from disconnection and to provide additional pathways to debt relief, consistent with the recommendations above. Vote Solar appreciates the opportunity to submit these comments and welcomes the opportunity to provide additional oral commentary or summary of these comments at the previously noticed May 27th virtual forum.

Respectfully submitted this 22nd day of May, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I have served the persons listed on the official service list for Docket No. 2020-106-A, listed below, a copy of the **VOTE SOLAR'S COMMENTS ON REGULATORY OPTIONS TO MITIGATE COVID-19 IMPACTS ON ELECTRIC RATEPAYERS** via U.S. Mail or electronic mail on this day, May 22, 2020.

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